Supreme Court, U.S.
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No. 91-1445

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1991

JANINE ADAMICK, JOSEPH ADAMICK, and THE ESTATE OF KATHLEEN JO PRICE, Deceased,

Petitioners,

vs.

AMEX, INC., formerly FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, a California Insurance Company, NEVADA FEDERAL CREDIT UNION, UNITED FIDELITY Insurance Company, a Texas Insurance corporation, BENEFIT CONSULTANTS, INC. a California corporation, and EQUIFAX SERVICES, INC., a Georgia corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF

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17

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	i
REPLY BRIEF	1
CONCLUSION	5
APPENDIX	

TABLE OF AUTHORITIES

Statutes, Rules and Regulations

S.Ct. Rules 8.2 and 15.6	1
Fed. R. of Civ.Pro. 6(a), 52(b) 59(e) and 58	1
F.R.C.P. 54(b)	3, 5

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REPLY BRIEF

The petitioners, Janine and Joseph Adamick and the Estate of Kathleen Jo Price respectfully submit this reply brief to the brief in opposition filed only by respondent Amex, Inc., pursuant to Supreme Court Rule 15.6, and respectfully suggest that the court consider sanctions against Amex and its counsel, LeFebrve, Barron & Oakes, under Supreme Court Rule 8.2.

Petitioners respectfully show the court that:

(a) The Notice Of Appeal was timely filed on March 25, 1991, App. 3 hereto, pursuant to an extension of time granted by the district court, App. 1, from the District Court's Order of January 25, 1991, Br. in Opp. App. 25 and 26, from the Order certified under Fed. R. of Civ. Pro. 54(b), entered on November 26, 1990, as a partial judgment, Pet. App. 8-11. The motion to amend the Nov. 26, 1990 Order was timely under F.R.C.P.

The Notice Of Appeal clearly advised the court of appeals that an extension had been granted, App. 4-5.

The petition in this court was timely. It was due on February 29, 1992, pursuant to an extension of time granted by Justice O'Connor, but not filed until Monday, March 2, 1992, Feb. 29 being a Saturday.

(b) Amex misstated at page 2 of its Brief that the motion for rehearing was denied on January 22, 1991 instead of the true date, January 25, 1991.

(c) The issue of whether Fireman's must pay the insurance proceeds was not before the court of appeals and is not before this court, as the district judge specifically stated that "other matters" "are the subject of deferral by this court to the good judges of the Eighth Judicial District Cour, Judgment, App. 9-11. at 10, and Br. in Opp. App. 16, wherein the

district court stated that it:

> "makes no finding, binding on any court, with regard to the ultimate issue presented herein, to wit, whether Amex, . . has any liability to JANINE M. ADAMICK, the ESTATE OF KATHLEEN JO PRICE or JOSEPH ADAMICK to pay pursuant to insurance certificate DVA-525-3197."

AMEX's counsel attempt to mislead this court by stating there was a "final judgment," Br. in Opp. 3, 2nd ¶, without qualifying that it was certified under Rule 54(b) as not final as to all issues.

(d) Petitioners apparently have been mistaken in believing that the court of appeals arbitrarily "unconsolidated" the two lower court cases, as it appears that the district court clerk or her deputies took it upon herself to send misleading notices to the court of

that the first appeal concerned only CV-S-146-HDM, Fireman's v. Janine Adamick and the Estate of Kathleen Price, and that the second one, as to return of the proceeds bond to Amex, concerned only CV-86-306, Janine Adamick, et al. v. Nevada Federal Credit Union, et al.

Amex further deceives this court by stating that the "action" involved a dispute betweene Fireman's and a number of insurance companies and the insured, Br. 2, whereas Fireman's alone filed the case against Janine Adamick, and continued with the suit after Judge Foley ruled that Fireman's was not entitled to any medical records of Price, App. 8-9.

The court of appeals does not receive the record until after the answering brief is filed.and relies only on inaccurate papers of the district court.

The court may also have erroneously believed that the first appeal was

untimely as its own docketing statement does not show an order granting an extension of time to file the Notice of Appeal and it also has the errors as to parties noted in the petition.

CONCLUSION

The petitioners respectfully suggest that this Honorable Court grant the petition and remand this action to the court of appeals for the reasons stated above for further proceedings, including allowing petitioners to file an Opening Brief, rather than the proposed two Opening Briefs, and only one Excerpts of Record and one record, or that the lower court remand to the district court for entry of a final order.

Respectfully submitted,

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INDEX TO APPENDIX

	Page
Order filed in District Court on March 1, 1991, granting extension of time to file a Notice Of Appeal	1
NOTICE OF APPEAL timely filed on March 25, 1991, 59 days after entry of Jan. 25, 1991 Order pursuant to extension of time.	3
ORDER filed on June 12, 1991 in Court of Appeals No. 91-15575 re motion to hold proceedings in abeyance denied without prejudice.	6
OORDER entered in CV-S-85-146 on July 17, 1985, by the Honorable Roger Foley granting motion to dismiss Amex's claim for medical records.	8

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, IND, n/k/a AMEX, INC, Plaintiff/ counterdefendant, vs. JANINE ADAMICK, individually; ESTATE OF KATHLEEN JO PRICE, Deceased, Defendants/ separate Counterclaimants.	CV-85-146-HDM NEVADA (Las Vegas) BASE FILE
JANINE ADAMICK and JOSEPH ADAMICK, individually; ESTATE OF KATHLEEN JO PRICE, Deceased, Plaintiffs, vs. NEVADA FEDERAL CREDIT UNION, etc., et al., Defendants.	CV-S-86-306-HDM O R D E R FILED March 1, 1991

ORDER

It is Ordered that plaintiffs' Parte Motion For An Extension Of Time To File A Notice of Appeal is granted and they have to March 27, 1991 to file a Notice Of Appeal.

DATED March 1, 1991

s/s Howard McKibben

Howard McKibben

United States District Judge

CR 286

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, IND, n/k/a AMEX, INC, Plaintiff/ counterdefendant, vs. JANINE ADAMICK, individually; ESTATE OF KATHLEEN JO PRICE, Deceased, Defendants/ separate Counterclaimants.	CV-85-146-HDM NEVADA (Las Vegas) BASE FILE
JANINE ADAMICK and JOSEPH ADAMICK, individually; ESTATE OF KATHLEEN JO PRICE, Deceased, Plaintiffs, vs. NEVADA FEDERAL CREDIT UNION, etc., et al., Defendants.	CV-S-86-306-HDM NOTICE OF APPEAL FILED MARCH 25, 1991

NOTICE OF APPEAL

Notice is hereby given that JOSEPH and JANINE ADAMICK and the ESTATE OF KATHLEEN JO PRICE, Deceased, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order and Judgment entered on January 25, 1991, granting judgment in favor of AMEX, INC., except that of the liability of AMEX, INC. to pay insurance proceeds, and the Order "referring" said issue to the state court and awarding attorney's fees and denying the Adamicks' motions.

The Adamicks also appeal from all previous Orders purportedly dismissing other defendants pursuant to Fed. R. of Civ. Proc. 54(b), in these consolidated actions, and all other adverse Orders entered herein, without waiving their objections that there is no final order herein as to all claims and all parties.

An extension of time to March 27,

1991 was granted to file this Notice Of Appeal.

/s/ JANICE M. HAYES, ESQ.
Nevada Bar #001881
3391 S. El Camino Rd.
Las Vegas, Nevada 89102
Attorney for JOSEPH and
JANINE ADAMICK and THE
ESTATE OF KATHLEEN JO PRICE,
Deceased.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, Plaintiff/Appellee, vs. JANINE ADAMICK, et al., Defendants/Appellants.	No. 91-15575 DC# CV-85-0146-HDM Nevada (Las Vegas) ORDER (Filed June 12, 1991)

The court is in receipt of appellants' motion to dismiss the appeal without prejudice and to hold all proceedings and requirements in abeyance until appellants' said motion is decided. The motion is unclear in light of the June 3, 1991 Order. The motion is denied without prejudice to a renewed motion which includes clarification of the requested relief.

This order is subject to reconsideration by a judge if any objection is filed

within ten (10) days of the entry of the order.

For the Court:

CATHY A. CATTERSON
Clerk of the Court

/s/ Robert Allen
Robert Allen
Deputy Clerk

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, INC., Plaintiff, vs. JANINE ADAMICK, Defendant.	CV-LV-85-146-RDF Nevada (Las Vegas) ORDER ENTERED (July 17, 1985)

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ORDER

Defendant Janine Adamick's motion to dismiss for want of subject matter jurisdiction and for failure to join indispensable parties is DENIED.

Defendant's motion to dismiss for failure to state a claim upon which

relief can be granted is also denied, except as to the claim that Fireman's is entitled to Kathleen Jo Price's medical records, on which claim, motion is GRANTED.

DATED June 14, 1985

/s/ Roger D. Foley

Roger D. Foley

United States
District Judge